IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7269 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIST PANCHAYAT

Versus

HUSAIN ALI

Appearance:

1. Special Civil Application No. 7269 of 2001

MS SEJAL K MANDAVIA for Petitioner No. 1-2

MR IS SUPEHIA for Respondent No. 1

MR AR SHAIKH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/11/2003

ORAL JUDGEMENT

Heard learned advocate Ms. Sejal K Mandavia for petitioners and learned advocate Mr. I.S.Supehia

appearing on behalf of respondent.

2. In the present petition, petitioner-District Panchayat has challenged the award passed by the Labour Court, Junagadh in Reference No. 146 of 1991 dated 23.2.2001 whereby the Labour Court has set aside the termination order and granted reinstatement with continuity of service with 40% back wages of interim period. The date of termination of the petitioner is 27.6.1991 and he raised immediate dispute under the machinery of the Industrial Disputes Act and referred for adjudication on 9.7.1991.

3. Learned advocate Ms. Sejal K Mandavia for petitioner fairly not disputed two aspects before this Court. One is that, the petitioner witness has admitted in his deposition that workman remained in continuous service for a period of two years and the second aspect is that, at the time of termination, Section 25(f) of the Act has not been followed by the petitioner. This fact is also stated by the witness of the petitioner before the Labour Court which is not disputed by learned advocate Ms. Sejal K Mandavia before this Court. Now, the only submission which has been submitted by Ms. Sejal K Mandavia is to the effect that the centre in which the respondent workman was working has been closed by the District Panchayat and that fact was admitted by the workman in his deposition. Therefore, it is very difficult for the District Panchayat to reinstate the workman in the post and place in which he was working. She submitted that respondent workman was working as part time employee as Nandi Sewak and it is not even sanctioned by the District Panchayat. Her submission is to the effect that no post and place is available with the District Panchayat then order of Labour Court cannot be implemented by the District Panchayat. She also submitted that a part time employee also granted 40% back wages of interim period and therefore Labour Court has committed gross error in granting 40% back wages to the respondent workman. She also submitted that respondent workman was appointed for fixed period awaiting the regular candidates by selection process and that is how the respondent workman was working continuously for a period of two years and thereafter when the centre was closed, he was terminated, which is legal but, Labour Court has committed gross error in setting aside the same.

4. Learned advocate Mr. I.S.Supehia appearing on behalf of respondent has submitted that when there is no dispute about two years of service of the workman and

non-compliance of Section 25(f) of the Act, then, normally and naturally, result must be reinstatement with continuity of service and with full back wages of interim period. Learned advocate Mr. Supehia has submitted that there is no fixed appointment order issued by the petitioner. No such challenge was made before the Labour Court by the petitioner. However, learned advocate Mr. Supehia referred to page 28 wherein also Item No. 3 relate to the respondent workman, no specific period has been mentioned, therefore, according to his submission, there was no fixed period of appointment made by the petitioner of the respondent workman and therefore, when no such contention has been raised before the Labour Court, petitioner is not entitled to raise the said contention first time before this Court. He also emphasized that the witness of the petitioner who was examined vide Exhibit-19 even he has also not stated in his evidence that respondent workman was working on a fixed period. So, when there was no evidence on record, the contention raised before this Court cannot be entertained by this Court. He submitted that looking to the evidence of the witness of the petitioner, persons those who were working at Gankuth Centre they were transferred at Panjara Pole, Limadra and therefore, if the Gankuth centre was closed, wherein respondent workman was working then, naturally, District Panchayat should have to transfer the respondent workman in another Panjara Pole in other place. Therefore, Mr. Supehia has submitted that the Labour Court has rightly observed in his award that other workman has been transferred to different Panjara Pole then why the present respondent workman should not be transferred. He also submitted that workman has admitted about his part of gainful employment and receiving the amount of Rs.5 to Rs.10 per day, therefore, Labour Court has rightly granted 40% back wages of interim period. He also submitted that no gainful employment of the respondent workman is proved by the petitioner before the Labour Court by leading any evidence, therefore, according to his submission this Court having very limited power under Article 227 of the Constitution of India. It is based upon documentary and oral evidence and once it is appreciated by the Labour Court, this Court cannot reappreciate the same and this Court will not interfere with such award. Therefore, his submission is that present petitioner must have to be dismissed with costs.

5. I have considered the submissions made by Ms. Sejal K Mandavia for petitioners as well as learned advocate Mr. I.S.Superhia appearing on behalf of respondent. The only question before this Court whether

the direction issued by the Labour Court, Junagadh granting the reinstatement with 40% back wages is legal or not. Once the termination is found to be illegal and ab initio void, the natural result is that workman is deemed to be in service for all purposes. That view has been taken by the Apex Court in the case of Mohan Lal v. Bharat Electronics, AIR 1983, 1253. However, this legal effect of termination is found to be ab initio void but Labour Court has considered the record which was placed before it. The Labour Court has considered the oral evidence of the petitioner witness vide Exhibit-19 that at the time when the Centre was closed two Peon and one Veterinary Doctor was there who have been transferred in different Panjara Pole, Limadra. Therefore, Labour Court has considered this evidence and come to the conclusion that once the termination is found to be illegal, workman is entitled reinstatement with continuity of service and considering the admission of the workman about some part of gainful employment, Labour Court has granted 40% back wages of interim period.

6. I have considered the observations made by the Labour Court and also considered the oral evidence of the workman and witness of the petitioner which were placed on record by the learned advocates. Considering this fact and looking to the direction issued by the Labour Court, according to my opinion Labour Court has not committed any error which require any interference by this Court. The finding recorded by the Labour Court is based upon the oral as well as documentary evidence. No challenge was made by the petitioner about the periodical appointment. No witness of the petitioner has stated the same thing. In light of this fact, now, before this Court, for the first time, the contention has been raised that respondent workman was appointed on periodical basis, cannot be accepted by this Court. Any plea which is not raised before the Labour Court and when there is no finding on that basis from the Labour Court, this Court cannot entertain first time while exercising power under Article 227 of the Constitution of India. This view has been taken by the Supreme Court in reported case 2003 (1) LLJ 507.

7. Therefore, considering the entire facts and circumstances of the case and looking to the documentary evidence as well as observations and findings recorded by the Labour court, according to my opinion the finding recorded by the Labour Court cannot be considered baseless and perverse. On the contrary it is a legal finding given by the Labour Court based upon the legal evidence. Therefore, when there is no error committed by

the Labour Court while passing such award, no interference is required by this Court while exercising powers under Article 227 of the Constitution of India. This Court having limited power and cannot act as an appellate authority as well as cannot reappreciate the same evidence which was appreciated by the Labour Court. Therefore, there is no substance in the present petition, present petition is therefore dismissed with no order as to costs. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.Rathod,J)

Jayanti*